



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Grant Information Circular

**GIC 09-02**

**July 23, 2009**

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## **GUIDANCE ON PROCESSING CONGRESSIONALLY DIRECTED ITEMS (EARMARKS) FOR FISCAL YEAR (FY) 2009**

**PURPOSE:** To provide guidance on processing earmarks included in the Explanatory Statement accompanying the FY 2009 Omnibus Appropriations Act (P.L. 111-8), enacted on March 11, 2009.

**BACKGROUND:** Grant Information Circulars (GIC) 08-02, dated March 27, 2008, provided guidance on processing earmarks for FY 2008. NASA had no earmarks during FY 2007.

In previous years, NASA's earmarks have been identified in Conference Reports accompanying annual appropriation bills for specific recipients (i.e., site-specific earmarks). Congressional earmarks specifying recipients have usually involved the noncompetitive award of a grant or cooperative agreement, but, on occasion, have involved contracts. Executive Order 13457, dated January 29, 2008, no longer permits such awards for earmarks unless the earmarks are incorporated in statute.

Public Law 111-8 provided FY 2009 appropriations for NASA and specified that within the amounts appropriated \$67.5 million shall be used for the 85 projects, in the amount, specified in the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act). That language provided as follows:

### **SEC. 4. EXPLANATORY STATEMENT.**

The explanatory statement regarding this Act printed in the House of Representatives section of the Congressional Record on or about February 23, 2009 by the Chairman of the Committee on Appropriations of the House shall have the same effect with respect to the allocation of funds and implementation of this Act as if it were a joint explanatory statement of a committee of conference.

NASA's Office of General Counsel has interpreted the above statutory language as satisfying the requirements of Presidential Executive Order 13457. Thus, these earmarks are statutory to the extent that they are specified in the Conference Report. Where the intended recipient of the earmark is not designated in the Conference Report, the recipient is not incorporated by

reference into the Appropriations Act. In actions involving new effort (grants and cooperative agreements), NASA will award grants and cooperative agreements noncompetitively to intended recipients. In actions within the scope of an existing contract, the work may be added under the authority of the changes clause. If the earmark is not within the scope of an existing contract, or the earmark does not contain the statutory language required under 10 U.S.C. 2304(k), NASA must compete a new award or prepare a Justification for Other Than Full and Open Competition (JOFOC) to justify the basis for awarding the work to the earmark designee without competition. Because NASA's earmarks for FY 2009 are incorporated into statute, the authority of 10 USC § 2304 (c) (5), Authorized or Required by Statute, is available as the basis for a JOFOC where the intended recipient is incorporated by reference. All other statutory requirements for contracts, grants, and cooperative agreements must be satisfied before award.

### ***GUIDANCE:***

**Noncompetitive awards.** To ensure sufficient funds are committed and to enable tracking of the award in SAP, technical officers shall ensure that the Purchase Request (PR) is entered into SAP as soon as possible. For all noncompetitive awards of grants and cooperative agreements covered by NASA's contract with the NASA Shared Services Center (NSSC), grant officers at NSSC are responsible for requesting the proposal, providing guidance to the recipient preparing the proposal, reviewing it, and coordinating its evaluation with the technical office. Technical officers should communicate with earmark designees as early as possible to ensure maximum alignment with NASA's missions.

Center technical officers should ascertain whether each recipient plans to utilize NASA facilities or personnel to carry out the proposed work, but the earmark recipient is not required in any way to do so. If specific, technical in-house NASA work is proposed by an earmark recipient to be performed by civil service workforce at a NASA Center, and is fully documented in the proposal, the Document of Readiness for Award (DORA), and the award documents, such costs may be charged directly to the earmark project.

The Explanatory Statement accompanying the FY 2009 Omnibus Appropriations Act specifies that NASA shall not charge administrative costs to FY 2009 earmarks, and shall provide appropriate management and oversight of each grant [or contract]. At each Center's discretion, administrative expenses for evaluating or executing earmarks may be charged to Center Management and Operations, not the earmark, and must be limited to 1 percent of the earmark or \$20,000, whichever is less.

In evaluating proposals, the common evaluation criteria discussed herein shall be used in conjunction with the requirements of 14 CFR § 1260.11, except that paragraphs (b) and (c) do not apply to proposals for noncompetitive earmarks. The following elements or factors, each approximately equal in weight, must be considered in evaluating any proposal for the non-competitive award of a grant or cooperative agreement:

- (1) The proposal's relevance to NASA's missions;
- (2) The intrinsic scientific, engineering, or educational merit of the proposed effort; and

(3) Cost realism, cost reasonableness, and cost performance history.

Examples of criteria that may be considered in evaluating the scientific, engineering, or educational merit of the proposed effort include: (a) the existence of unique or innovative methods or the quality of the approaches or concepts demonstrated by the proposal; (b) the qualifications, capabilities, and experience of the key personnel critical in achieving the proposed objectives; (c) the proposer's facilities, techniques, and past experience and performance relevant to the proposed objectives; and (d) for proposed research, advancement of the state-of-the-art.

In evaluating cost realism, cost reasonableness, and cost performance history, the grant officer will work closely with the technical officer. For cost performance history, the grant officer should evaluate whether the recipient has effectively used funds on previous awards by NASA, especially earmarks. Consider whether the outcomes of prior awards were commensurate with the funds expended.

NASA evaluators may find that some earmarks are not directly relevant to NASA's missions. Moreover, in some cases NASA evaluators may question the intrinsic scientific, engineering, or educational merit of the proposed effort. In such cases, grant and technical officers should work with prospective recipients to align their proposals as closely as possible with NASA's missions.

If evaluators find the proposal unacceptable for award or other legal or regulatory grounds exist for finding award inappropriate, grant officers must refer it to the Assistant Administrator for Procurement, the Office of General Counsel, and the Deputy Assistant Administrator for Legislative and Intergovernmental Affairs at NASA Headquarters for concurrence.

The technical officers will prepare the DORA and submit copies to the Office of Legislative and Intergovernmental Affairs (OLIA) at Headquarters. The final technical evaluation will not be submitted to procurement for award until OLIA has concurred on the DORA.

**Competitive awards.** When competitive grants or cooperative agreements are conducted, they will be assigned to a NASA center. The grant officer at the designated NASA center shall request the proposals, provide guidance to recipients regarding their preparation, review them, and coordinate their evaluation with the technical officer. Following selection, the complete grants requirements package shall be submitted to the NSSC for award. This includes (a) the proposal including two certifications (lobbying and suspension and debarment) and one EEO assurance; (b) the technical evaluation; (c) the solicitation; (d) the Progress Report Memorandum of Review/Continuation, if it is a grant renewal; (e) the Purchase Request (PR) number; and (f) other documentation identified by the grant officer, e.g., the environmental impact statement, etc.

The common evaluation criteria discussed herein shall be used in conjunction with the requirements of 14 CFR § 1260.11, including paragraphs (b) and (c). The following elements or factors, each approximately equal in weight, must be considered in evaluating any proposal for the competitive award of a grant or cooperative agreement:

- (1) The proposal's relevance to NASA's missions;
- (2) The intrinsic scientific, engineering, or educational merit of the proposed effort; and

(3) Cost realism, cost reasonableness, and cost performance history.

***OTHER GENERAL GUIDANCE:***

**Unsolicited proposals.** Proposals for earmarks shall not be considered “unsolicited” proposals.

**Construction.** While NASA will not permit the use of earmark funds for non-NASA construction, earmark funds may, however, be used for equipping, outfitting, wiring, etc.

**Tracking.** Grant officers shall update biweekly the spreadsheets on earmarks issued by OLIA and transmit their updates to Tomeika.L.Blackwell@nasa.gov. Also furnish copies to Paul.D.Brundage@nasa.gov in the Office of Procurement. NSSC will also track the status of awards on its web site <http://www.NSSC.NASA.gov/grantstatus>.

- DORAs initiated and signed by the Center technical officer must be completed before the award of any site-specific earmark.
- Earmarks were issued new WBS numbers and will be treated as new awards. Technical Officers may not add additional funds to the earmark.
- It is the expectation of the Administrator that proposals for all FY 2009 earmarks shall be evaluated and awarded, if possible, no later than September 30, 2009.
- OLIA is responsible for issuing biweekly updates of spreadsheet for overall tracking of execution of FY 2009 earmarks to OCFO, Mission Directorates, Mission Support Offices, Headquarters Procurement, and Center CFOs.
- In addition to satisfying the requirements in 14 CFR §1260.73 and Grant Information Circular 05-01 dated March 09, 2005, requests for transfer of the Principal Investigator or transfer of the earmark must be approved by OLIA, The Office of General Counsel, and Procurement.

***EFFECTIVE DATE:*** This GIC is effective as dated and shall remain in effect until cancelled or superseded.

***CANCELLATION:*** GIC 08-02, dated March 27, 2008, is hereby canceled.

***HEADQUARTERS CONTACT:*** Paul Brundage, Contract Management Division, (202) 358-0481, email: [paul.d.brundage@nasa.gov](mailto:paul.d.brundage@nasa.gov).

James A. Balinskas  
Director, Contract Management Division

Enclosures:

1. [Sample of a Cover Letter Soliciting a Proposal for an Earmark Specifying a Recipient](#) (in MS Word)

2. [Sample of a Solicitation for an Earmark Specifying a Recipient](#) (in MS Word)

**DISTRIBUTION:**  
**GIC List**